

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D32128  
O/kmb

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Submitted - June 17, 2011

PETER B. SKELOS, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

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2009-08011

DECISION & ORDER

The People, etc., respondent,  
v William Nunziata, appellant.

(Ind. No. 461/01)

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Robert C. Mitchell, Riverhead, N.Y. (James H. Miller III of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael J. Miller of counsel;  
Philip Branigan on the brief), for respondent.

Appeal by the defendant from an order of the County Court, Suffolk County (Gazzillo, J.), dated July 20, 2009, which, after a hearing, denied his motion for resentencing pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738, § 23), on his conviction of criminal possession of a controlled substance in the first degree, which sentence was originally imposed, upon a jury verdict, on May 14, 2002.

ORDERED that the order is reversed, on the law and in the exercise of discretion, the motion is granted, and the matter is remitted to the County Court, Suffolk County, for further proceedings in accordance herewith.

Contrary to the Supreme Court's determination, substantial justice did not dictate the denial of the defendant's motion for resentencing pursuant to the Drug Law Reform Act of 2004 (L 2004, ch 738, § 23). The defendant has an exemplary prison record, with no disciplinary history in the approximately eight years that he spent incarcerated prior to the hearing on his motion for resentencing. The defendant also earned a GED certificate and successfully completed a vocational training program and numerous bible study classes while incarcerated, while receiving excellent progress reports in these programs. In light of the presumption in favor of resentencing, the

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defendant's rehabilitative efforts and exemplary prison record, and other factors, including the defendant's advanced age and supportive family, outweighed the considerations upon which the Supreme Court relied in denying the defendant's motion (*see People v Hallman*, 84 AD3d 1266; *People v Beasley*, 47 AD3d 639, 641).

Accordingly, the defendant's motion is granted and the matter is remitted to the County Court, Suffolk County, for further proceedings in accordance with the applicable resentencing procedure (*see* L 2004, ch 738, § 23).

SKELOS, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court